

R381-70-8. BACKGROUND CHECKS.

The rules in this section explain the provider's and other covered individuals' responsibilities regarding background checks. The rules regulate how to obtain a background check, when it is required, and what criteria are used in determining if an individual passes or fails a background check.

Rationale/Explanation

To ensure their safety and physical and mental health, children should be protected from any risk of abuse or neglect. Performing diligent background screenings also protects the child care facility against future legal challenges. CFOC 4th ed. Standard 1.2.0.2 p.p. 10.

Covered Individuals

Covered individuals are those who are involved with a child care program and are required to have a background check as explained below. An individual with a failed background check must not be involved with a child care program and will be required to leave if found at a facility during child care hours.

Owners and Members of the Governing Body

- An owner, whether a sole owner or if the child care center's legal structure is a corporation, a state or local government, or a private nonprofit agency, is considered an owner or member of the governing body if they perform one or more of the following functions.
 - They have unsupervised access to the children in care.
 - They are at the center during hours of operation.
 - They make decisions regarding the day-to-day operations of the child care center.
 - They participate in hiring or firing the child care program staff.
 - The child care program staff report to them and/or they conduct personnel evaluations of any of the child care program staff.
 - They are involved in writing the child care program's policies and procedures.

Directors

- These background check rules pertain to the director and director designee of a center. Refer to "Section 7: Personnel and Training Requirements" for other rules that apply to directors.

Caregivers and Other Staff

- Individuals who care for the children are required to pass background checks.

- Any individual who is hired to work for the child care center, is an employee who must have a current background check.
- Some child care centers are in buildings that also house other programs or activities such as a city or county recreation center, a community center, a church, or a school. These organizations may have employees who have no direct involvement with the children in care. These employees are not required to have background checks on the condition that they never have unsupervised contact with any child in care including when in a bathroom. The child care provider must submit a written statement to CCL explaining how they prevent these other organizations' employees from having unsupervised contact with the children in care.

Volunteers, Guests, and Others Who May Have Access to Children

- There are several types of volunteers and guests including parents of enrolled children, individuals who are providing a service at the center, family members, student interns, and children age 13 years and older who help in a classroom. Refer to "Section 7: Personnel and Training Requirements" for the rules and information about background check requirements for these individuals.
- An individual who rents space in the center will be required to have a background check unless exempt under certain conditions. Refer to "Section 9: Facility" for more information.
- Any individual 12 years or older who resides or moves into a child care facility is considered a covered individual and is required to have a background check. This applies whether or not the individual directly participates in the child care program.

CCL Background Check Process

All prospective covered individuals must pass a CCL background check before becoming involved with a child care program. Background checks from other organizations do not meet the requirements of this rule. For Child Care Licensing, a background check includes examining a covered individual's background through the following eight sources which encompass three in-state checks, two national checks, and three interstate checks. CCL also checks the Utah sex offender registry for the names of any registered sex offenders who reside in the vicinity of the child care facility.

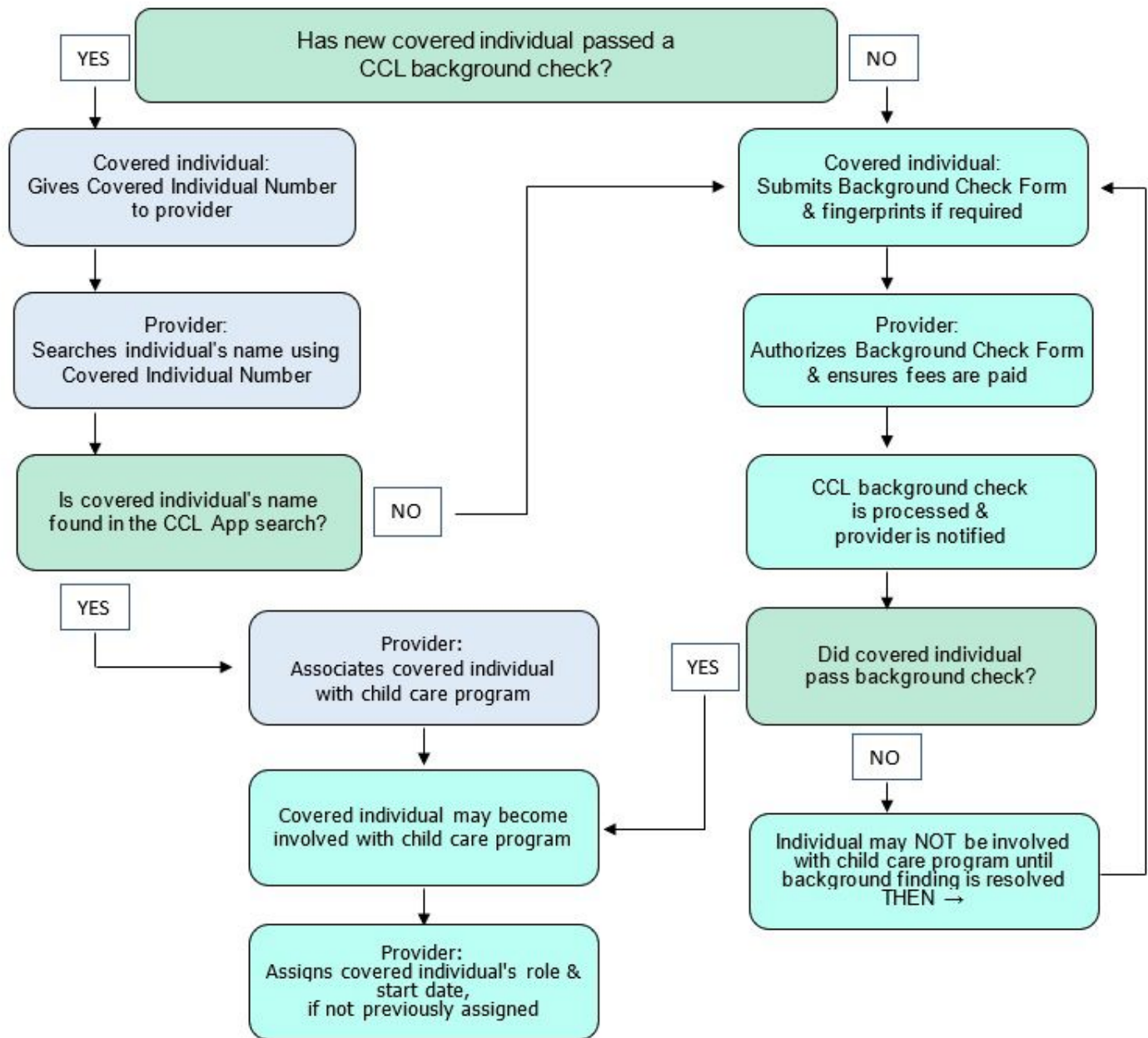
Utah	National	Interstate
1. Criminal registry or repository <ul style="list-style-type: none"> • Uses fingerprints • Includes juvenile records • Fingerprints not required for minors, except 16- or 17-year-old caregivers working for a DWS-approved facility 	4. FBI Next Generation Identification <ul style="list-style-type: none"> • Uses fingerprints • Retains fingerprints for a real-time criminal report from FBI (Rap Back service) • For individuals 18 years old and older 	6. Criminal registry or repository <ul style="list-style-type: none"> • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older
2. Sex offender registry or repository <ul style="list-style-type: none"> • For individuals 12 years old and older • Checks all facility addresses for names of registered sex offenders living in vicinity of child care facility 	5. National Crime Information Center (NCIC) National Sex Offender Registry (NSOR) <ul style="list-style-type: none"> • For individuals 18 years old and older 	7. Sex offender registry or repository <ul style="list-style-type: none"> • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older
3. Child abuse and neglect registry and database <ul style="list-style-type: none"> • For individuals 12 years old and older 		8. Child abuse and neglect registry and database <ul style="list-style-type: none"> • In any other state where the individual has resided in the past 5 years • For individuals 18 years old and older

CCL participates in the FBI Next Generation Identification (NGI) system. The NGI process uses fingerprint identification to identify individuals arrested and prosecuted for crimes. With this system, authorized government agencies will receive an individual's criminal history record reported to the FBI and State.

It usually takes 3 full days for OBPS (Office of Background Processing and Security) to complete a background check after the request (including fingerprints if required) has been submitted, authorized, and paid for. However, the background check may take longer when the individual has resided outside of Utah within the past five years.

The diagram below summarizes the steps that the covered individual, the provider, and CCL must complete in the background check process. A detailed explanation of the process is described in the Compliance Guidelines sections below

CCL Background Check Process for New Covered Individual



- (1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:
- (a) verify that the individual has a current CCL background check; and
 - (b) associate that individual with their facility if the covered individual appears in the search.

Rationale/Explanation

This screening requirement may protect children from abuse and reduce liability risks while reassuring parents/ guardians that their children are safe from violent and sexual offenders and those with related criminal histories. CFOC 4th ed. Standard 10.3.3.2 p.p. 434.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

- (2) Before a new covered individual who does not appear in the CCL provider portal search becomes involved with child care in the program, the provider shall:**
- (a) have the individual submit an online background check form and fingerprints for individuals age 18 years old and older;**
 - (b) authorize the individual's background check through the CCL provider's portal,**
 - (c) pay any required fees; and**
 - (d) receive written notice from CCL that the individual passed the background check.**

Compliance Guidelines

- This rule applies to covered individuals who have never had a CCL background check, and individuals who have passed a CCL background check, but are new to a child care facility.
- This rule does not apply to children who reside in the facility and are turning 12 years old. For information about their background check requirements, refer to 100-8(2).

For a new covered individual who has never had a CCL background check

- The covered individual must submit a background check request form and fingerprints if required.
 - Instructions for requesting a CCL background check and the background check form are found at: <https://childcarelicensing.utah.gov> under "Background Checks."
 - Instructions for submitting fingerprints, if required, are found at: <https://childcarelicensing.utah.gov/BgsHowTo.html>.
- The provider must authorize the form through their CCL portal and ensure that all fees are paid.
 - For instructions on paying fees, go to the "[Payments](#)" page on the CCL website
- CCL will begin checking the individual's background when:
 - The individual has submitted a complete background request form,
 - The provider has authorized the background check to be run,

- Required fingerprints have been submitted, and
 - All fees have been paid.
- CCL will cancel the background check request if required fingerprints are not submitted and/or fees are not paid within 10 working days of the provider's authorization.
- If the covered individual passes the background check:
 - CCL will notify the provider and the individual of the background check results.
 - An electronic background check card (with a Covered Individual Number) will be emailed to the individual.
 - CCL will associate the individual with the child care facility.
 - "Cleared," "Passed," or "Temporary Passed" will be displayed as the status on the CCL provider portal.
 - The individual may then be involved with the facility.
 - As soon as a prospective employee has passed either the FBI or Utah criminal registry fingerprint check, CCL will allow the individual to become involved with the child care facility on a provisional basis.
 - This is allowed on condition that the individual never has unsupervised contact with any child. The individual must be supervised at all times by an adult who has passed the CCL background check.
 - The background status on the provider's CCL portal will display as "Temporary Passed."
 - The individual's involvement with the child care program is considered provisional until they pass the entire CCL background check from all sources.
 - If the covered individual does not pass the background check:
 - They may not be involved with a child care facility.
 - "Denied" will be displayed as the status; and both the provider and the covered individual will be notified in writing as well.
 - Previously denied individuals who may now be eligible to pass the background check will be required to resubmit a background check request, including fingerprints and fees, in order to be associated with child care.
 - The provider must determine whether the covered individual's background check is active as required by rule.
 - On the provider's CCL portal, the provider can search the individual's background check status by using the Covered Individual Number.
 - If the individual's background check is active, their name will show up in the search.

- If the individual's background check is active and they have passed the FBI fingerprint check:
 - They are not required to submit a new background check and associated fee.
 - The provider is required to associate the individual with their child care facility.
 - The covered individual may then become involved with the child care facility.
- If the individual's background check is active, but they have not passed the FBI fingerprint check as required by rule, they must submit a new CCL background check request form, fingerprints, and all associated fees.
- If the individual's name does not show up in the search (indicating that they do not have an active CCL background check), they must submit a CCL background check request form, fingerprints (if required), and all associated fees.
- Individuals who have not been associated with any CCL facility in Utah for the past 180 days (6 months) will not show up in the search and will be required to resubmit a background check request, including fingerprints and fees, in order to be associated with child care again.

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning when:

- A new covered individual was involved with the child care program without passing a CCL background check.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning when:

- A temporarily cleared individual (one who passed only part of the CCL background check) had unsupervised contact with the children.
- A new covered individual with an active background check was not associated with the child care facility before being involved with the program.

(3) The department may include a covered individual by name on the CCL provider portal and consider that covered individual's background check to be current if the covered individual has:

- (a) passed a CCL background check;**
- (b) resided in Utah since the last background check was completed; and**

(c) been associated with an active, CCL approved child care facility within the past 180 days.

(4) Within ten working days from when a child who resides in the facility turns 12 years old, the provider shall:

- (a) ensure that an online background check form is submitted;
- (b) authorize the child's background check through the CCL provider's portal; and
- (c) pay any required fees.

Rationale/Explanation

Juvenile offender records begin at age 10 years. CFOC 4th ed. Standard 10.3.3.2 p.p. 434.

Compliance Guidelines

- When a child who resides in the facility turns 12 years old, they are considered a new covered individual.
- The child's parent has 10 working days from their child's 12th birthday to submit a background check request form. CCL will not accept background check requests for individuals younger than 12 years old.
- The provider must ensure that all associated fees are paid and authorize the background check through their CCL portal. The submission of fingerprints is not required.
- CCL will begin checking the child's background when:
 - A complete background request form has been submitted,
 - The provider has authorized the background check to be run, and
 - All fees have been paid.
- CCL will cancel the background check request if fees are not paid within 10 working days of the provider's authorization.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

(5) The provider shall ensure that fingerprints are prepared by a local law enforcement agency or an agency approved by local law enforcement.

Compliance Guidelines

- Care About Childcare is an approved agency where fingerprints may be prepared.
- Live Scan Fingerprint Locations are available in this [document](#).

- (6) If fingerprints are submitted electronically through live scan, the provider shall ensure that the agency taking the fingerprints is one that follows the department's guidelines.

Compliance Guidelines

Care About Childcare is an approved agency where fingerprints may be prepared.

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

- (7) The department may deny a covered individual from being involved with child care for any of the following background findings:
- (a) LIS supported findings;
 - (b) the covered individual's name appears on the Utah or national sex offender registry;
 - (c) any felony convictions; or
 - (d) for any of the reasons listed under Subsection R381-100- 8(8).

Rationale/Explanation

To ensure their safety and physical and mental health, children should be protected from any risk of abuse or neglect. CFOC 4th ed. Standard 1.2.0.2 p.p. 9.

Compliance Guidelines

If CCL denies a covered individual from being involved with child care, that individual may not have access to the child care facility or the children in care.

- (8) The department may also deny a covered individual from being involved with child care for any of the following convictions regardless of severity:
- (a) unlawful sale or furnishing alcohol to minors;
 - (b) sexual enticing of a minor;
 - (c) cruelty to animals, including dogfighting;
 - (d) bestiality;
 - (e) lewdness, including lewdness involving a child;
 - (f) voyeurism;
 - (g) providing dangerous weapons to a minor;
 - (h) a parent providing a firearm to a violent minor;
 - (i) a parent knowing of a minor's possession of a dangerous weapon;
 - (j) sales of firearms to juveniles;
 - (k) pornographic material or performance;
 - (l) sexual solicitation;

- (m) prostitution and related crimes;
- (n) contributing to the delinquency of a minor;
- (o) any crime against an individual;
- (p) a sexual exploitation act;
- (q) leaving a child unattended in a vehicle; and
- (r) driving under the influence (DUI) while a child is present in the vehicle.

(9) The department shall approve a covered individual if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred ten or more years before the CCL background check was conducted.

(10) If the provider fails to pass a background check, the department may suspend or deny their license until the reason for the denial is resolved.

Compliance Guidelines

To suspend a license means that the license is temporarily revoked.

(11) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

Compliance Guidelines

It is a rule violation if a covered individual who failed the background check is involved with a child care facility, and consequently, the individual must leave the facility

Risk Level

High

Corrective Action for 1st Instance

Citation and CMP Warning

(12) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information to the Department of Public Safety.

(13) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS), the covered individual may appeal the finding to

the Department of Human Services.

- (14) The provider and the covered individual shall notify the department within 48 hours of becoming aware of the covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding. Failure to notify the department within 48 hours may result in disciplinary action, including revocation of the license.

Compliance Guidelines

- It is important that both the covered individual and the provider each report to CCL within 48 hours of having knowledge of any of the situations described above.
- An arrest does not automatically disqualify a covered individual from being involved with child care. CCL will use this information to verify if the nature of the arrest or charges will result in a denial.
- If an individual receives a ticket for a driving offense or other infraction of the law, it is not required to report the ticket to CCL unless it becomes an arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding

Risk Level

Moderate

Corrective Action for 1st Instance

Citation Warning

- (15) The Executive Director of the Department of Health may overturn a background check denial if the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

Compliance Guidelines

Any request to the Executive Director for a decision on a background check denial must be made through the CCL program appeal process. Please refer to “Section 5: Rule Violations and Penalties” for information about the appeal process